

EXHIBIT 1

From: [Hardin, Ashley](#)
To: [Cardinal WV](#)
Subject: FW: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations
Date: Tuesday, August 13, 2019 9:53:09 PM

From: David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>
Sent: Tuesday, August 13, 2019 9:47 PM
To: Andrea Bierstein <abierstein@simmonsfirm.com>; 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; MDL 2804 <MDL2804@motleyrice.com>; 'xALLDEFENDANTS-MDL2804-Service@arnoldporter.com' <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>; Knapp, Timothy <tknapp@kirkland.com>
Subject: Re: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

External E-mail

Dear Counsel:

Despite Plaintiffs' valiant attempts to characterize the recent submissions of Rosenthal, Cutler, McGuire, and Glied as something other than rebuttal reports -- mostly by asserting the reports' content will not be the subject of testimony at trial, and instead serves only as "Daubert opposition" -- the fact is that the new material amends and even modifies the original expert reports (Rosenthal, Cutler, McGuire) and/or provides entirely new expert opinion (Glie) for the purpose of rebutting defendants' criticisms.

In another MDL with a more relaxed schedule it is conceivable I would allow this, along with additional depositions by defendants and extensions of deadlines for briefing. But that is not remotely possible in this case. The new material arrives very late in the process, is prejudicial to defendants, and was not permitted by the Court. Accordingly, the motion to strike is granted in its entirety.

Plaintiffs should please let me know by COB tomorrow whether you need me to formalize this ruling.

-David

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This email sent from:
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From: Andrea Bierstein <abierstein@simmonsfirm.com>
Sent: Tuesday, August 13, 2019 7:46 PM
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Subject: RE: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

I attach Plaintiffs' response to Defendants' motion to strike.

Andrea Bierstein
Simmons Hanly Conroy
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From: Knapp, Timothy [<mailto:tknapp@kirkland.com>]
Sent: Tuesday, August 13, 2019 6:49 PM
To: Andrea Bierstein <abierstein@simmonsfirm.com>; David Cohen <david@davidrcohen.com>; 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; MDL 2804 <MDL2804@motleyrice.com>; David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>; 'xALLDEFENDANTS-MDL2804-Service@arnoldporter.com' <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>
Subject: RE: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

Special Master Cohen,

Following up on my email below regarding Defendants' motion to strike, just this afternoon, Plaintiffs sent backup files for the new Cutler, Rosenthal, and McGuire reports. The backup files include:

1. Rosenthal: 9 SAS files supporting her new analyses
2. Cutler: 4 separate folders of new data and analyses, including over a dozen Stata, Excel and SAS files
3. McGuire: 3 new Excel files, including new tables and appendices

As we have briefed, these new reports and back-up materials are exceedingly late and should have been timely provided almost six months ago on March 25. If the motion to strike were denied, based on our experience with the first set of backup materials, it would take many weeks or months for Defendants' experts to process and review this new data to assess whether we have it all, request missing files, and appropriately make sense of these new analyses. That of course would need to be followed by depositions, not to mention an opportunity for Defendants' experts to respond at trial. Plaintiffs' further delay in producing

this backup data compounds the timing issues created by their already-far-too-late and improper new expert reports. Defendants reiterate our request that you strike all four declarations.

Regards,
Tim

Timothy W. Knapp

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From: Andrea Bierstein <abierstein@simmonsfirm.com>
Sent: Tuesday, August 13, 2019 2:39 PM
To: David Cohen <david@davidrcohen.com>; 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; MDL 2804 <MDL2804@motleyrice.com>; David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>; 'xALLDEFENDANTS-MDL2804-Service@arnoldporter.com' <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>
Subject: [EXT] RE: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

External E-mail

You will have it by then, thanks.

Andrea Bierstein
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From: David Cohen [<mailto:david@davidrcohen.com>]
Sent: Tuesday, August 13, 2019 1:34 PM
To: Andrea Bierstein <abierstein@simmonsfirm.com>; 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; MDL 2804 <MDL2804@motleyrice.com>; David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>; 'xALLDEFENDANTS-MDL2804-Service@arnoldporter.com' <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>
Subject: Re: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

I need Ps response by 9:00p tonight latest.

sent from my cell phone
David R. Cohen

From: Andrea Bierstein <abierstein@simmonsfirm.com>
Sent: Tuesday, August 13, 2019 12:17:26 PM
To: 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>; MDL 2804 <MDL2804@motleyrice.com>; David R. Cohen (David@SpecialMaster.Law) <david@specialmaster.law>; 'xALLDEFENDANTS-MDL2804-Service@arnoldporter.com' <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>
Subject: RE: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

Special Master Cohen: Plaintiffs are preparing a response to this motion, which we propose to provide to you no later than noon tomorrow. We respectfully request that you wait for our response before ruling. Thank you.

Andrea Bierstein
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From: 2804 Discovery, MDL [<mailto:mdl2804discovery@motleyrice.com>]
Sent: Tuesday, August 13, 2019 9:49 AM
To: MDL 2804 <MDL2804@motleyrice.com>
Subject: FW: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

From: Knapp, Timothy <tknapp@kirkland.com>
Sent: Tuesday, August 13, 2019 1:47:05 PM
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Cc: xALLDEFENDANTS-MDL2804-Service@arnoldporter.com <xALLDEFENDANTS-MDL2804-Service@arnoldporter.com>; 2804 Discovery, MDL <mdl2804discovery@motleyrice.com>
Subject: EXTERNAL-RE: MDL 2804: Motion to Strike New Expert Declarations

Special Master Cohen,

Defendants respectfully request that you issue a ruling on the motion referenced below (and attached) as soon as possible as it affects *Daubert* reply briefs due on Friday. If the new expert reports aren't stricken in the next day or two, at a minimum Defendants will need a stay of their reply deadline for the Cutler, Rosenthal, and McGuire *Daubert* motions.

Regards,
Tim

Timothy W. Knapp

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From: Knapp, Timothy
Sent: Tuesday, August 6, 2019 10:52 PM
To: 'David R. Cohen (David@SpecialMaster.Law)' <david@specialmaster.law>
Cc: xALLDEFENDANTS-MDL2804-Service@arnoldporter.com;
mdl2804discovery@motleyrice.com
Subject: MDL 2804: Motion to Strike New Expert Declarations

Special Master Cohen,

Please see the attached motion to strike four untimely expert reports Plaintiffs submitted in connection with their Daubert briefing. Defendants respectfully ask for an expedited ruling on this issue as it affects reply briefs due next Friday.

Regards,
Tim

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